

SUPPLEMENTAL McNAMARA DECLARATION
EXHIBIT 12

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3
4

5 HACHETTE BOOK GROUP, INC.,
6 HARPERCOLLINS PUBLISHERS LLC,
7 JOHN WILEY & SONS, INC., and
8 PENGUIN RANDOM HOUSE LLC,

9 Plaintiffs,

10 vs.

11 No. 1:20-cv-04160-JGK

12 INTERNET ARCHIVE and DOES 1

13 through 5, inclusive,

14 Defendants.

15

 /

16 VIDEOTAPED RULE 30(b)(6) AND PERSONAL

17 DEPOSITION OF JACQUES CRESSATY

18 Remote Zoom Proceedings

19 San Francisco, California

20 Friday, October 22, 2021

21
22
23 REPORTED BY:

24 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

25 Pages 1 - 276

Job No. 4857811

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1 MS. LANIER: Great.

2 THE VIDEOGRAPHER: We are off the record. The
3 time is 3:16 p.m.

4 (Recess.)

5 (Exhibit 90, INTARC00137129 - 135, marked for
6 identification electronically by counsel.)

7 (Exhibit 91, INTARC00137136 - 39, marked for
8 identification electronically by counsel.)

9 (Exhibit 92, Letters from USAC Schools &
10 Libraries Division, marked for identification
11 electronically by counsel.)

12 (Exhibit 93, INTARC00137116 - 128, marked for
13 identification electronically by counsel.)

14 THE VIDEOGRAPHER: We are back on the record.

15 The time is 3:30 p.m.

16 Q. BY MR. BROWNING: Good to see you again,
17 Mr. Cressaty. When we left off, we were trying to upload
18 Exhibit 90. We have now succeeded. Could you open up
19 that document, please?

20 Do you have it in front of you?

21 A. It's uploading.

22 Q. Great.

23 A. Okay.

24 Q. Mr. Cressaty, have you seen this document
25 before?

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1 A. Yes, I have.

2 Q. What is it?

3 A. This is a grant from LSTA to Internet Archive.

4 Q. And I'm going represent to you that this is the
5 grant that was referred to in the letter marked as
6 Plaintiffs' Exhibit 89, the State of California. Does
7 that make sense to you?

8 MS. LANIER: Objection. Foundation.

9 THE WITNESS: Are you talking about the previous
10 letter?

11 Q. BY MR. BROWNING: So just to recap, Plaintiffs'
12 Exhibit 89 was a letter from the California State Library
13 announcing that Internet Archive had been given LSTA
14 funding. This document, Plaintiffs' 90, I am
15 representing to you that it is the notification of grant
16 award for the grant that was referred to in the letter we
17 were previously discussing.

18 Do you have any reason to believe that's not the
19 case?

20 MS. LANIER: Objection. Calls for speculation.

21 THE WITNESS: I don't know. I assume so.

22 Q. BY MR. BROWNING: Just seeing if I can find a
23 date there which might help us.

24 Could you go to page 5 PDF? It's got a heading
25 "LSTA Grant Award Documentation."

1 Do you see that?

2 A. I'm sorry?

3 Q. Do you see the page with the heading "LSTA Grant
4 Award Documentation" on page 5 of 7?

5 A. Yes. Yes, I see it. Yeah.

6 Q. Great.

7 And do you see below that it says, "Approval
8 date," July 10, 2007?

9 A. No. This is -- yeah, July 10th. Yes.

10 Q. Could you do me a favor and hit on your
11 browser -- in the bottom left corner there's a button
12 that says previous file. Would you hit previous file,
13 please?

14 And let me know when you can see Plaintiffs'
15 Exhibit 89.

16 A. Okay.

17 Q. Okay. Do you in the first paragraph of the text
18 it says that the LSTA funding is for July 1, 2007, to
19 June 30th, 2008?

20 A. I do.

21 Q. Does it, therefore, stand to reason that
22 Plaintiffs' 90 is a confirmation of that grant award,
23 since the dates aligned? You previously agreed with me
24 that the approval date was July 2007.

25 A. It does, but it's also confirmation that

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1 Internet Archive is a library.

2 Q. I understand that's your position, but I think
3 we're on the same page, which is the letter on -- as
4 Exhibit 89 is related to the grant on 90. I think we can
5 agree on that; right?

6 A. Let me go back to the other one.

7 Q. Okay.

8 A. Okay.

9 Q. Great. And then, Mr. Cressaty, back on
10 Plaintiffs' Exhibit 90, is this an example of a
11 restricted grant, as we previously used and defined that
12 term?

13 MS. LANIER: Objection. Scope.

14 THE WITNESS: It is restricted as to what the
15 money is supposed to be used for.

16 Q. BY MR. BROWNING: What is it supposed to be used
17 for?

18 A. To provide one web page per book.

19 Q. And to your knowledge, does the one web page per
20 book project required in this document have anything to
21 do with the lending library.

22 MS. LANIER: Objection. Scope.

23 THE WITNESS: My understanding is that
24 OpenLibrary.org is a card catalog.

25 Q. BY MR. BROWNING: That's my understanding as

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1 well, so is it your understanding that this grant was to
2 build the card catalog?

3 A. I would say yes.

4 Q. Great.

5 And the card catalog is separate from the
6 lending library, which actually allows you to go a step
7 further and borrow books; right?

8 MS. LANIER: Objection. Scope.

9 THE WITNESS: That, I don't know.

10 Q. BY MR. BROWNING: Okay. But on the basis of
11 this document, there is nothing in here that causes you
12 to believe that the funding was provided for Controlled
13 Digital Lending or the lending library; right?

14 MS. LANIER: Objection. Scope.

15 THE WITNESS: I don't know that Controlled
16 Digital Lending existed in 2007.

17 Q. BY MR. BROWNING: I can represent to you that it
18 did not, and so I think that answers my question.

19 On page 3 of this document do you see at the
20 bottom of -- let me know when you're there.

21 Okay. The first heading, "Consolidated
22 Application Notification." The bottom of that first
23 paragraph says, "The total amount paid by the California
24 State Library to the subgrantee," i.e. Internet Archive,
25 "under this agreement shall not exceed \$342,000 and

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1 change and shall be expended/encumbered in the period
2 ending June 30, 2008."

3 Do you see that?

4 A. Is that the first paragraph on that page 3?

5 Q. Yes. It's the end of that first paragraph on
6 page 3. Sorry. I was a bit unfair. I started in the
7 middle of a sentence, but it's the time period that I'm
8 most interested in.

9 A. Okay.

10 Q. So if I'm understanding that correctly, and
11 correct me if I'm wrong, this grant was time limited and
12 the money was to be used on or before June 30th, 2008;
13 correct?

14 A. That is correct.

15 MS. LANIER: Objection. Scope.

16 Q. BY MR. BROWNING: Great.

17 MR. BROWNING: Carl -- or actually, we've
18 already -- we've preloaded this one, so Carl doesn't need
19 to do anything.

20 Q. Jacques, could you go back into the shared
21 folder and please open up Exhibit 91.

22 Oh, my apologies. We're actually going to be
23 looking at a different exhibit entirely. Stand by,
24 please.

25 Okay. Back in the Marked Exhibits folder,

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1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3

4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do
5 hereby certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections
10 made by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any party
18 to said action, nor am I in any way interested in the
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 28th day of October, 2021.

22

23

24



25

LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462